IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 4284 of 2007
Date of decision: 27.09.2007

Mai Ram and others **.....Petitioners**

Versus

Punna Ram and others **....Respondent**

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: **Mr.J.K.Goel, Advocate,**
for the petitioners.
Mr.Yogesh Chaudhary, Advocate,
for the respondents.

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RAJESH BINDAL,J.

The prayer made in the present petition is for setting aside the impugned order dated 09.08.2007 passed by the Additional Civil Judge (Senior Division), Karnal, whereby the application of the petitioner-plaintiffs for amendment of the plaint has been dismissed.

Learned counsel for the petitioners submitted that the amendment sought to be made in the plaint, is to the effect that the property in dispute were benami in the name of Atu @ Atma as it was the petitioner-plaintiffs who paid for it to the extent of ½ share. He further submitted that another allegation sought to be added in the plaint is that the impugned judgment and decree was a result of fraud and misrepresentation as Atu neither appeared in the Court at Karnal nor made a statement. Still further that thumb impression in the written statement filed in the earlier suit by Atu was existing before the alleged written statement was typed out. He submitted that the amendment is necessary for the proper adjudication of the matter and the same should be allowed.

On the other hand, learned counsel for the respondents submits that the suit in the present case was filed way back in the year 2003 and the same was fixed for rebuttal evidence in March, 2007. After completion of

the entire proceedings, firstly the petitioner-plaintiffs filed an application for additional evidence on April 23, 2007, which was followed by application for amendment of issues on 27.04.2007, both of which were dismissed on 11.06.2007. Thereafter, in July, 2007, present application for amendment of the plaint was filed, which is nothing else, but an indirect way to achieve the object, which the petitioner-plaintiffs could not achieve by filing the earlier application for additional evidence or for amendment of issues. He further submitted that the trial of the case having been completed, there was no occasion for filing the application for amendment of the plaint, which is nothing else but an effort to fill up the lacuna, which can not be permitted at all.

Having heard learned counsel for the parties, I find merit in the contentions raised by learned counsel for the respondents. Once the primary challenge in the suit filed by the petitioners- plaintiffs is to the judgment and decree suffered earlier by Atu, all the pleas to challenge the same should have been raised in the suit filed at that time. The conduct of the petitioners shows that the efforts is plainly to achieve, what he could not be achieved by filing the application for additional evidence or amendment of issues. The orders passed against them in these applications were accepted by them. There is substantial delay in filing of the application as well. The merits of the controversy, amendment sought to be made by the petitioners is not being discussed in detail least the same may prejudice the case of the parties. As far as plea regarding benami ownership is concerned, the learned trial Court has rightly rejected even that ground sought for amendment as on the date of filing of the suit, the ground was not available to the petitioners-plaintiffs.

Accordingly, I do not find any merit in the present petition, the same is dismissed.

September 27, 2007 **(RAJESH BINDAL)**
nt **JUDGE**